

**Education Audit Appeals Panel
State of California**

Appeal of 2004-05 Audit Findings 05-19,
05-20, 05-23, 05-24, 05-29, and 05-31; and
Appeal of 2005-06 Audit Findings 06-38,
06-40, 06-43, 06-44, 06-45, 06-46, and
06-50 by:

Oakland Unified School District,

Appellant.

EAAP Case No. 07-02

EAAP Case No. 08-17

OAH No. 2009080093

OAH No. 2009091563

Decision

The Education Audit Appeals Panel has adopted the attached Stipulation and Settlement Agreement of the parties as its Decision in the above-entitled matters with the proviso that, notwithstanding the recital in Paragraph 18 of the Statement of Facts that “The parties agree that Finance’s intervention maybe deemed to extend to the appeal in EAAP Case Number 08-17,” the Office of Administrative Hearings granted that intervention pursuant to Government Code Section 11440.50 and Title 5, California Code of Regulations, Section 19805 on October 19, 2009, as evidenced in the attached Order Granting Motion to Intervene.

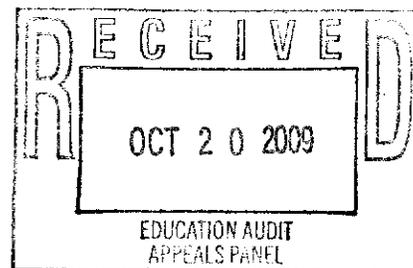
Effective date: November 16, 2009

IT IS SO ORDERED.

November 16, 2009
Date

Original Signed
Diana L. Ducay, Chairperson
for Education Audit Appeals Panel

BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA



In the Matter of the Appeal of:

OAKLAND USD,

Appellant.

Case No. 08-17

OAH No. 2009091563

ORDER GRANTING MOTION TO
INTERVENE

On October 8, 2009, the California Department of Finance, through its attorney, Deputy Attorney General Sarah E. Kurtz, filed a motion to intervene in the above-referenced matter. The motion was served on the two parties to this proceeding, Oakland Unified School District and the Controller of the State of California.

* * * * *

This matter involves an appeal by Oakland Unified School District challenging Findings 06-38, 06-40, 06-43, 06-44, 06-45, 06-46 and 06-50 of an audit report performed by auditors from the Controller's Office for the fiscal year 2005-06.

The Controller is a party to all audit appeals. (Ed. Code, § 41344.1, subd. (b).) The Department of Education and the Department of Finance "may, at their election, timely intervene as a party in any appeal." (*Ibid.*) The procedure set forth in Government Code section 11440.50 governs motions to intervene in these proceedings. (Cal. Code Regs., tit. 5, § 19805.) It provides in relevant part in subdivision (b):

The presiding officer shall grant a motion for intervention if all of the following conditions are satisfied:

- (1) The motion is submitted in writing, with copies served on all parties named in the agency's pleading.
- (2) The motion is made as early as practicable in advance of the hearing. . . .
- (3) The motion states facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The presiding officer determines that the interests of justice and prompt conduct of the hearing will not be impaired by allowing the intervention.

The Department of Finance seeks to intervene in this proceeding so that it may carry out its statutory obligation to ensure that the school district is adhering to state compliance programs and procedures in the expenditures of state funds. (See Ed. Code, § 14500 et seq.; Gov. Code, § 13070.) Its obligations are distinct from the statutory responsibilities of the Controller. Among other things, the Controller has the primary responsibility to implement and oversee the fiscal audit and review program established by the Legislature in Education Code section 14500 et seq. It is thus established that Finance has a direct interest in the subject matter of this proceeding, its interest is adverse to the school district and it is distinct from that of the Controller.

There is no showing that permitting Finance to intervene in this matter would impair the prompt conduct of the proceeding.

The motion was made in writing, served on the parties to the proceeding, and was made in advance of the hearing.

It is therefore concluded that the motion of Finance to intervene in this proceeding meets all the requirements of subdivision (b) of Government Code section 11440.50. At this time, there does not appear to be any reason to limit or condition Finance's participation in this proceeding. (See Gov. Code, § 11440.5, subd. (c).) The motion to intervene is granted.

ORDER

Good cause appearing, the motion of the California Department of Finance to intervene in this matter is GRANTED.

DATED: October 19, 2009


CHERYL R. TOMPKIN
Presiding Administrative Law Judge
Office of Administrative Hearings

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Attorney General of the State of California
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7 Attorneys for Department of Finance
8

9 **BEFORE THE**
10 **EDUCATION AUDIT APPEALS PANEL**
11 **STATE OF CALIFORNIA**

12 **In the Matter of:**

13 **(1) Appeal of Fiscal Year 2004-2005 Audit**
14 **Findings 05-19, 05-20, 05-23, 05-24, 05-29, and**
15 **05-31 by OAKLAND UNIFIED SCHOOL**
DISTRICT; and,

16 **(2) Appeal of Fiscal Year 2005-06 Audit**
17 **Findings 06-38, 06-40, 06-43, 06-44, 06-45, 06-46,**
and 06-50 by OAKLAND UNIFIED SCHOOL
DISTRICT,

18 **Appellant,**

19 **v.**

20 **OFFICE OF THE STATE CONTROLLER,**
21 **Respondent,**

22 **DEPARTMENT OF FINANCE,**
23 **Intervenor.**
24

(1) Case No. EAAP 07-02

OAH No.: 2009 080093

(2) Case No. EAAP 08-17

OAH No.: 2009 091563

STIPULATION AND SETTLEMENT
AGREEMENT

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1 Appellant Oakland Unified School District ("District"), respondent Office of the State
2 Controller ("Controller"), and intervenor California Department of Finance ("Finance") agree to
3 complete resolution of the appeals of Audit Findings 05-19, 05-20, 05-23, 05-24, 05-29, and 05-
4 31 for fiscal year ended June 30, 2005, and of Audit Findings 06-38, 06-40, 06-44, 06-46, 06-50,
5 06-43, and 06-45 for fiscal year ended June 30, 2006, as follows:

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7 **STATEMENT OF FACTS**

8 1. Pursuant to Senate Bill 39 (Stats. 2003, ch. 14), the Controller conducted financial
9 and compliance audits of the District for the fiscal years ended June 30, 2005 and June 30, 2006
10 and thereafter issued Audit Reports.

11 2. The Audit Reports, as certified by the Controller, contain Findings 05-19, 05-20,
12 05-23, 05-24, 05-29, and 05-31 for fiscal year ended June 30, 2005, and 06-38, 06-40, 06-43, 06-
13 44, 06-45, 06-46, and 06-50 for fiscal year ended June 30, 2006.

14 **2004-2005 Findings**

15 3. Finding 05-19 determined variances in the reconciliation of reported attendance
16 and district summaries, under the requirements of Education Code section 41601.

17 4. Finding 05-20 determined that High Street Academy did not maintain attendance
18 records to support the total number of attendance days claimed, under the requirements of
19 Education Code section 46000, and Title 5 of the California Code of Regulations, sections 16025
20 and 16026.

21 5. Finding 05-23 determined that the required kindergarten continuation forms were
22 not compliant or not provided by five of six schools tested, under the requirements of Education
23 Code sections 46300, subdivision (g), and 48011.

24 6. Finding 05-24 determined deficiencies in work samples and/or work agreements
25 and/or contract agreements, under the requirements of Education Code sections 51747.5,
26 subdivision (a), 51748, and Title 5 of the California Code of Regulations section 11703.

27 7. Finding 05-29 determined deficiencies in the records of attendance and ITSDR
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1 program claim, under the requirements of Education Code section 44579.1, subdivision (e).

2 8. Finding 05-31 determined the district did not provide evidence that 3 out of 14
3 teachers tested had the required CSR training, under the requirements of Education Code sections
4 52126 and 52127, and Title 5 of the California Code of Regulations section 19826.1, subdivision
5 (f).

6 **2005-2006 Findings**

7 9. Finding 06-38 determined that three teachers were not credentialed for part of the
8 year (total of 283 days), under the requirements of Education Code sections 45037, 44256,
9 44258.3 and 44263.

10 10. Finding 06-40 determined various problems with short term independent study
11 attendance and contracts, under the requirements of Education Code section 51747.5, subdivision
12 (b), and title 5, California Code of Regulations sections 11702, subdivision (a), and 11703.

13 11. Finding 06-43 determined instructional time shortage of 450 minutes at one school
14 and 150 minutes at another school, under the requirements of Education Code sections 46201,
15 subdivision (a)(3), and 46201, subdivision (d).

16 12. Finding 06-44 determined inappropriate classes were claimed (\$22,489) and
17 missing documentation (\$2,152), under the requirements of Education Code sections 52084,
18 subdivision (d), and 44256.

19 13. Finding 06-45 determined public hearing for instructional materials not held
20 within 8 weeks or at the proper time, under the requirements of Education Code section 60119.

21 14. Finding 06-46 questioned whether a particular textbook was on the approved list,
22 under the requirements of Education Code section 60400 and Title 5 of the California Code of
23 Regulations section 19828.1, subdivisions (e)(3) and (e)(4).

24 15. Finding 06-50 determined expenditures charged to Proposition 20 did not meet
25 program requirements, under the requirements of Education Code section 60010.

26 16. The District timely submitted its appeal of Findings 05-19, 05-20, 05-23, 05-24,
27 05-29, and 05-31 to the Education Audit Appeals Panel on July 9, 2009.

28 17. The District timely submitted its appeal of Findings 06-38, 06-40, 06-43, 06-44,

1 06-45, 06-46, and 06-50 to the Education Audit Appeals Panel on August 25, 2009.

2 18. Subsequently Finance, on August 26, 2009 intervened in the appeal in EAAP Case
3 Number 07-02 (Appeal of Fiscal Year 2004-05 Audit findings 05-19, 05-20, 05-23, 05-24, 05-29,
4 and 05-31 by OUSD). The parties agree that Finance's intervention may be deemed to extend to
5 the appeal in EAAP Case Number 08-17 (Appeal of 2005-06 Audit Findings 06-38, 06-40, 06-43,
6 06-44, 06-45, 06-46, and 06-50 by OUSD).

7 19. This Agreement is subject to the approval of the Education Audit Appeals Panel,
8 pursuant to Education Code section 41344.1, subdivision (b).

9 NOW, THEREFORE, in consideration of the mutual promises contained herein and for
10 good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the
11 parties agree as follows:

12 AGREEMENT

13 1. For the purposes of effecting a compromise of this action, and to prevent the
14 uncertainty and cost of further litigation, the Controller, Finance, and District agree:

- 15 a. That as a result of the determinations contained in Findings 05-19, 05-20,
16 05-23, 05-24, 05-29, and 05-31 for fiscal year ended June 30, 2005, and of
17 Audit Findings 06-38, 06-40, and 06-44 for fiscal year ended June 30, 2006
18 in lieu of any other penalty or other loss of funding, the District shall repay
19 \$800,099.
- 20 b. The repayment of \$800,099 shall be withheld from the District's next
21 principal apportionment following the date this Agreement is approved by
22 the Education Audit Appeals Panel.
- 23 c. That in addition to the \$800,099 repayment pursuant to paragraph (a), the
24 District shall:
- 25 i. repay Findings 06-46 (\$239,520) and 06-50 (\$270,946) through
26 journal entries.
- 27 ii. withdraw the following findings due to State Board or County
28 Office waivers:

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1. 06-43 (received State Board of Education waiver – made up the time).

2. 06-45 (resolved by Alameda County office of Education).

d. That the District will make all reasonable efforts in the future to insure compliance with the provisions of law at issue in these audits.

2. This Agreement shall fully resolve any and all claims, demands, audit findings, appeals, obligations and/or causes of action, now and hereafter arising, relating to alleged violations of law identified in Audit Findings 05-19, 05-20, 05-23, 05-24, 05-29, and 05-31 of the 2004-2005 fiscal year audit of the District, and in Audit Findings 06-38, 06-40, 06-43, 06-44, 06-45, 06-46, and 06-50 of the 2005-2006 fiscal year audit of the District.

3. Accordingly, the District, Finance, and the Controller expressly waive any right or claim or right to assert thereafter any claim, demand, audit finding, obligation and/or cause of action relating to the alleged violations of law identified in Audit Findings 05-19, 05-20, 05-23, 05-24, 05-29, and 05-31 of the 2004-2005 fiscal year audit of the District, and in Audit Findings 06-38, 06-40, 06-43, 06-44, 06-45, 06-46, and 06-50 of the 2005-2006 fiscal year audit of the District, other than any right or claim to enforce this Agreement, and Finance and the Controller will refrain from engaging in further activity to adversely affect District funding based on the 2004-2005 and 2005-2006 fiscal year Audit Findings at issue in these appeals.

Dated: 10/29/09

OAKLAND UNIFIED SCHOOL DISTRICT
By: Original Signed
Richard C. Miadich
Olson Hagel & Fishburn LLP
Attorneys for Oakland Unified School District

Dated: 10/29/2009

OFFICE OF THE STATE CONTROLLER
By: Original Signed
Gary D. Hori, Staff Counsel
Attorney for John Chiang, State Controller

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Dated: 10/29/2009

DEPARTMENT OF FINANCE

By: Original Signed
Sarah E. Kurtz
Deputy Attorney General
Attorney for Department of Finance

Dated: 10/29/09

~~OAKLAND UNIFIED SCHOOL DISTRICT~~

By: Original Signed
Noel Gallo
President, Board of Education
By: Original Signed
Edgar Rakestraw
Secretary, Board of Education

Legislative File

09-3035
Enactment No. 10-28-09
Enactment Date 09-2098
10-28-09
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Approved as to Form:
Original Signed
Jacqueline P. Minor
General Counsel
Oakland Unified School District